Supreme Court, U.S.
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IN THE OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

JIN RIE, dba EAST WEST INSTITUTE,

Plaintiff and Petitioner.

v.

BANK OF AMERICA, N.A.; ALAN ROSEN; LAW OFFICES OF ROSEN & LOEB; ROBERT MCKENDRICK; LAW OFFICES OF HEMAR, ROUSSO & HEALD; et al,

Defendants and Respondents.

On Petition for Writ of Certiorari
To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

Petitioner/Appellant in Pro Per:
Jin Rie
110 North Berendo Street
Los Angeles, CA 90004
213-389-7944

I. QUESTION PRESENTED FOR REVIEW

The question presented in this petition is what standard of review is applicable when the Court fails to give a civil litigant warning regarding the dangers and risks of self-representation in a complex civil case, similar to the warning given to a criminal defendant which requires that a defendant "be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open."[1]

[1] Faretta v. California, 422 U.S. 806, 835, 45 L. Ed. 2d 563, 95 S. Ct. 2525 (1975).

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II. OPINIONS BELOW

On January 10, 2005, the Court of Appeal Second Appellate District Division Four affirmed the Trial Court's decision. On March 30, 2005 the Supreme Court of California denied review of the Petition for Appeal in an unpublished opinion.

III. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1331. The question presented by this petition is an important federal question of law under Supreme Court Rule 10(c) that has not been settled by this Court and is thus subject to review before the Supreme Court of the United States.

IV. STATUTORY PROVISIONS INVOLVED

The statues and rules involved are set forth in the Appendix to this Brief ("App.").

V. STATEMENT OF THE CASE

Petitioner ("Rie") opened a line of credit and merchant account with the Bank in September 1994. The line of credit was in the amount of $ 25,000, and later increased to $ 35,000. By February 2000, Rie had used "a little less than $ 35,000" in order to cope with the foreclosure that is the subject of other lawsuits. In August or September 2001, the Bank began to withdraw $ 800 per month from Rie's business account as payments on the line of credit, and Rie quickly closed that account. Sometime earlier, beginning in about June 2001, agents or employees for R&L had demanded, on behalf of the Bank, that the entire debt be repaid "contrary to [Rie's] previous arrangement with [the Bank]." On October 26, 2001, Rie "talked over the phone with several persons including Nicole, an employee of [the Bank], about the matter of this case, and Nicole agreed orally to restore the line of credit account." The Bank, however, "would not restore the line of credit

and as such subverted the oral agreement." In addition, at some point in early 2001, the Bank returned payments Rie attempted to deposit in the merchant account, "alleging that [Rie] closed the [merchant]account because of charge-backs" when, in fact, the Bank "closed that account arbitrarily without warning and discussion and without following proper procedure," and refused to reinstate it.

With respect to the attorney respondents, Rie was "informed and believes" that Rosen and R&L "influenced the subversion [of the alleged oral agreement to restore the line of credit] out of malice toward [Rie] because [Rie] had previously initiated a lawsuit against Rosen" and that Rosen and R&L have "ulterior motives . . . to prevent/interrupt/undermine the lawsuit by [Rie] against them by financial pressure or deprive [Rie] of his funds for the lawsuit, and to harass [Rie] financially out of malice due to a previous lawsuit." McKendrick and HR&H were accused of "conspiring with Defendants Rosen and R&L" and failing to serve a motion for summary judgment on Rie in the case in which the Bank sued Rie.

Rie accused the Bank of breach of implied covenant of good faith and fair dealing "by closing [Rie's] line of credit account and merchant account" in the first cause of action and breach of oral contract in the second cause of action for breach of the alleged October 26, 2001, oral agreement to restore the line of credit. The third cause of action, for inducement of breach of contract, was addressed to Rosen and R&L, claiming they were involved in the loss of his line of credit and merchant account with the Bank by foreclosing on a piece of property owned by Rie. Rie brought suit against Rosen and R&L in June 2002, and they "induced [the Bank] not to restore the line of credit account . . . in order to interrupt and interfere with [Rie's] other litigation against [them]." The fourth cause of action for abuse of process was alleged against all respondents and was based on respondents having "improper motives and interests against [Rie] since 2000 until now." The cause of action appears to be based on the Bank's Collection Action, since reference is made to "hard and oppressive collection activities against Rie by [Rosen and R&L]

as the retained law offices of [the Bank]" and "the motive to get speedy and easy success in the case of [the bank] with less cost." The attorney respondents were charged with advising the Bank "not to restore the line of credit account, to file a complaint, not to try to settle in a reasonable way, to speed up the procedure maximally, to attempt speedy default judgments, to collect more hard and more oppressively, to make the other party spend more attorney fees and legal costs."

The fifth cause of action for conspiracy to commit abuse of process was alleged against Rosen, R&L, McKendrick, and HR&H, as was the sixth cause of action for interference with economic relations. The interference was again based on information and belief that the attorney respondents "improperly [sought] to defame [Rie] and to subvert [the Bank's] policies and institute collection against [Rie] to convince [the Bank] to abandon [Rie's] line of credit." The FAC also accused Rosen and R&L, on information and belief, of making false statements and furnishing "false information" to the Bank. The seventh cause of action for interference with prospective economic advantage, echoed the sixth, claiming that Rosen and R&L "discouraged [the Bank] not to maintain the line of credit and their agreement with [Rie] because [Rosen and R&L] wanted to interrupt and interfere with the litigation against Rosen, et al." The eighth and ninth causes of action for "violation of civil procedure" and fraud claimed that McKendrick and HR&H selected the wrong venue in the Bank's Collection Action, and that Rie was served with the motion for summary judgment at the wrong address.

A. Respondents' Demurrers and Court's August 1, 2003, Order

Respondents demurred to all causes of action in which they were named in three separate demurrers. By order dated August 1, 2003, the trial court sustained the demurrers, without leave to amend for the most part, leaving only two potentially viable claims against the Bank.

Specifically, Rosen and R&L demurred to the third cause of action for inducement of breach of contract, the fourth cause of

action for abuse of process, the fifth cause of action for conspiracy to commit abuse of process, the sixth cause of action for interference with economic relations, and the seventh cause of action for interference with prospective economic advantage. The court sustained this demurrer without leave to amend. As to the interference and inducement claims, the court stated that the FAC indicated that "Rosen and R&L were acting at all relevant times as [the Bank's] agents and within the scope of such agency, and . . . an agent acting within the course and scope of his agency cannot be liable for interfering with his principal's contracts or contractual relations with third parties, or with economic advantage third parties hope to derive by means of their contractual/economic relations." With respect to the abuse of process and conspiracy claims, the court stated that the FAC "failed to allege facts that there was any abuse of process and thus both claims fail for lack of an essential element."

McKendrick and HR&H likewise demurred to the fourth cause of action for abuse of process, the fifth cause of action for conspiracy to commit abuse of process, the sixth cause of action for interference with economic relations, and the seventh cause of action for interference with prospective economic advantage, and also to the eighth and ninth causes of action for "violation of civil procedure" and fraud in which they were the only named defendants. The court sustained their demurrer, without leave to amend, as to the fourth through seventh causes of action "for the same reasons and on the same grounds as stated [in connection with the demurrer of Rosen and R&L]." As to the eighth and ninth causes of action, the court stated: "These claims are barred on their face by the litigation privilege for the same reasons as stated in the Court's ruling on Union Bank's demurrer to these claims as alleged in [Rie's] original complaint.

Finally, the Bank demurred to the first cause of action for breach of implied covenant, the second cause of action for breach of oral agreement, and the fourth cause of action for abuse of process--the only causes of action in which it was named. The court rejected the defense of another action pending, describing it as a "disfavored" plea in abatement, and reproved the Bank for

failing "to properly request judicial notice of the pleadings in the other action." The Bank also demurred to the first cause of action for failure to state facts indicating the existence of a contractual right; to the second cause of action for failure to indicate that the person Rie allegedly spoke to had the authority to bind the Bank or that he provided any consideration; and to the fourth cause of action on the ground of failure to plead any fact indicating that the Bank misused any process.

The court found merit to the Bank's contentions, noting that Rie failed to sufficiently allege "the terms of the underlying express agreement and his contractual rights thereunder to indicate that any of the alleged conduct by [the Bank] somehow deprived [Rie] of the benefit of those contractual rights"; "(a) facts indicating that the [Bank] employee who allegedly entered into an oral agreement with [Rie] had any authority to enter into such agreements on [the Bank's] behalf; or ([b]) facts indicating that [Rie] provided any consideration for the alleged agreement to restore [the Bank's] line of credit"; or "that [the Bank] misused any process in the underlying action, as opposed to using such process in the manner it was intended to be used but more aggressively than [Rie] thought appropriate."

The court sustained the demurrer without leave to amend as to the abuse of process claim, and granted Rie permission to amend the first and second causes of action for breach of contract.

B. Rie's Appeal

Rie appealed from the court's order on **[*13]** August 13, 2003. The notice stated that he intended to appeal the court's ruling on the third and fifth through ninth causes of action. For the fourth cause of action, Rie "appealed from Ruling . . . against [attorney respondents] entirely. If he is allowed to claim against [attorney respondents] in this cause of action, he will give up that cause of action against [the Bank] voluntarily." The notice further stated: "For the 1st and 2nd causes of action, [Rie] does not appeal wholly but he just wants to amend them after getting another opinion in other causes of action and against other Defendants from the court of appeal. In other words, in these 2